STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	Docket No. 00-0700
Illinois Bell Telephone Company	:	
	:	
Investigation into tariff providing unbundled local switching with shared transport	:	

TESTIMONY

OF

JAMES D. WEBBER

ON BEHALF OF

CORECOMM ILLINOIS, INC.

MARCH 6, 2001

OFFICIAL FILE

ILL. C. C. DOCKET NO. 00-0700

CoreComm Exhibit No. 1

Witness _____

Date 6-27-01 Reporter CB

I. INTRODUCTION AND QUALIFICATIONS

Q. PLEASE PROVIDE YOUR NAME AND BUSINESS ADDRESS.

A. My name is James D. Webber and my business address is 225 W. Ohio, Suite 200, Chicago, IL 60610.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by CoreComm Communications, Inc., as the Regional Director, Regulatory and Carrier Relations for the mid-western states. In my current position I have responsibilities over CoreComm's relationship with Ameritech as it pertains to our local business. Further, I have responsibility over all regulatory initiatives within the Ameritech region.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION AND PROFESSIONAL BACKGROUND.

A. I attended Illinois State University where I earned a Bachelor of Science degree in Economics (1990) and a Master of Science degree in Economics (1993).

Prior to accepting my current position with CoreComm (October of 2000), I was employed by AT&T where I held positions within the company's (1) Local Services and Access Management organization and its (2) Law and Government Affairs organization. As a District Manager within the Local Services and Access Management organization I had responsibilities over local interconnection and

billing assurance. In that capacity, I oversaw a team of individuals who were responsible for many aspects of AT&T's interconnection agreements with ILECs, such as Ameritech, billing assurance/disputes and cost optimization projects. Prior to that position, I had served as a District Manager – Law and Government Affairs (November 1997 to March 1999) where I was responsible for implementing AT&T's policy initiatives at the state level. In that capacity I provided expert testimony throughout the mid-west on matters including public policy, economic theory, cost and pricing related issues.

Prior to joining AT&T, I was employed (July, 1996 to November, 1997) as a Senior Consultant with the Competitive Strategies Group, Ltd. ("CSG"), a Chicago-based consulting firm that specialized in competitive issues in the telecommunications industry. While working for CSG, I provided expert consulting services to a diverse group of clients, including telecommunications carriers and financial services firms. In many instances, I provided expert testimony on behalf of telecommunications carriers such as AT&T and MCI regarding economic theory, public policy, cost and pricing related issues.

From 1994 to 1996, I was employed by the Illinois Commerce Commission, ("ICC") where I served as an Economic Analyst and, ultimately, as Manager of the Telecommunications Division's Rates Section. In addition to my supervisory responsibilities, I reviewed Local Exchange Carriers' ("LECs") tariffed and contractual offerings as well as the supporting cost, imputation and aggregate

revenue data. I also provided expert testimony with respect to cost-of-service and rate design issues, including the appropriate application of Illinois' statutory requirements.

From 1992 to 1994, I was employed by the Illinois Department of Energy and Natural Resources, where I was responsible for modeling electricity and natural gas consumption and analyzing the potential for Demand Side Management ("DSM") programs to offset growth in the demand for, and consumption of, energy. In addition, I was responsible for analyzing policy options regarding Illinois' compliance with environmental legislation.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS OR ANY OTHER STATE PUBLIC UTILITY COMMISSION?

A. Yes, I have. In fact, I have testified on numerous occasions before each of the state commissions within Ameritech's operating territory. A list of these cases is contained within attachment JDW-1 to this testimony.

II. PURPOSE OF TESTIMONY AND SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The primary purpose of my testimony is to address that portion of SBC/Ameritech's ULS-ST tariff *requiring* UNE-P based Interexchange IntraLATA traffic to be routed to a CLEC's intraLATA primary interexchange

carrier ("LPIC"), rather than routing such traffic within SBC/Ameritech's intraLATA network along with SBC/Ameritech's intraLATA traffic. This restriction in SBC/Ameritech's ULS-ST tariff is inherently discriminatory, economically inefficient, violates the TA96 and is contrary to SBC/Ameritech's obligations pursuant to Paragraph 56 of the FCC's merger conditions which requires SBC/Ameritech to offer shared transport under terms and conditions that are substantially similar (or more favorable than) the most favorable terms offered to CLECs in Texas as of August 27, 1999.

Furthermore, and particularly relevant to the instant proceeding, Ameritech's refusal to provide shared transport for intraLATA traffic violates this Commission's Order approving SBC's purchase of Ameritech. That order specifically requires SBC-Ameritech to implement "the same version of shared transport that has been implemented by SBC in Texas," and continues that requirement "even if the FCC eventually decides that unbundling Shared Transport is not proper." (Docket No. 98-0555, Order at p.187).

III. SBC-AMERITECH'S ULS-ST TARIFF UNDUELY RESTRICTS THE ROUTING OF CLEC UNE-P BASED INTRALATA TRAFFIC

Q. HOW DOES SBC-AMERITECH INTEND TO ROUTE UNE-P BASED INTRALATA TRAFFIC?

A. Mr. Hampton's testimony, and the tariff attached thereto, very clearly indicate that Ameritech intends to force-route the CLECs' UNE-P based intraLATA toll traffic out to an interexchange carrier's POP where it can then be re-routed back into Ameritech's network for termination. That is, Ameritech will treat all UNE-P based intraLATA traffic as though it were interLATA traffic. (Hampton Testimony at PP. 15 - 16)

Q. WHAT IS THE CONSEQUENCE OF THIS RESTRICTION?

A. Aside from the fact that this feature of Ameritech's ULS-ST tariff violates both state and federal requirements, there are multiple consequences. For example, this routing requirement discriminates against CLECs because their UNE-P based intraLATA toll traffic will be sent out to the separate network of an IXC and then back into Ameritech network for termination. Ameritech's intraLATA toll traffic, however, will remain wholly within its own network. This discriminatory treatment ensures that the CLECs' traffic cannot be competitive with Ameritech's traffic from an economic standpoint. It also ensures that CLECs will also have fewer routing choices. That is, CLECs must choose an IXC's service for intraLATA purposes or they must determine how to self-provision all such transport. They will be prohibited from using the existing SBC-Ameritech network built specifically to carry traffic terminating to another Ameritech end-office. As a further result, societal resources are intentionally wasted due to the fact that Ameritech will cause additional routing and additional switching equipment to be involved with every intraLATA call as compared to the

equipment that would be involved if the traffic remained wholly within Ameritech's network. Finally, because the CLECs' choices are restricted and costs are artificially increased, they cannot offer to consumers the benefit of further reduced pricing and/or more robust local service offerings -- the result being reduced benefits to consumers.

Q. WILL THIS RESTRICTIVE ROUTING CAUSE THE CLECS ANY FINANCIAL HARM?

A. Yes, it will. To the extent that CLECs are forced to route intraLATA traffic through IXCs, for example, and pay those carriers a wholesale rate to carry such traffic, CLECs will incur a rate which is clearly more expensive than Ameritech's cost-based shared transport rates. Assuming the difference between the cost-based shared transport rate and the IXC resale rate is about 3 cents per minute and that an average customer uses 100 minutes of intraLATA calling in one month, the margin on such customers will be $3.00 lower than it could be if CLECs were given non-discriminatory access to all of Ameritech's transport facilities as is required by the Act and both the FCC and ICC merger orders.

Q. WHAT IS YOUR UNDERSTANDING OF SBC/AMERITECH'S REASONING BEHIND ITS REFUSAL TO ALLOW CLECS TO USE ITS SHARED TRANSPORT NETWORK TO PROVIDE INTRALATA SERIVICES?

A. According to Mr. Hampton, Ameritech cannot allow the CLECs' UNE-P based traffic to remain wholly within Ameritech's network because the FCC's Third Order on Reconsideration requires the use of SBC-Ameritech's existing routing tables and precludes the use of customized routing, which he alleges is necessary to keep the CLEC's UNE-P based intraLATA traffic wholly within SBC-Ameritech's network. (See Mr. Hampton's testimony at PP.15-16).

Q. DOES THE FCC'S 3RD ORDER ON RECONSIDERATION PRECLUDE CORECOMM'S PREFERED ROUTING (I.E., THAT INTRALATA TRAFFIC BE ROUTED WHOLLY OVER AMERITECH'S NETWORK)?

A. No.

Q. IN CASES WHERE CORECOMM INTENDS TO ROUTE ITS UNE-P BASED INTRALATA TRAFFIC WITHIN AMERITECH'S NETWORK, WOULD CORECOMM REQUEST CUSTOMIZED ROUTING OF ANY SORT?

A. No. Contrary to the position taken by SBC-Ameritech's witness in this proceeding, routing CoreComm's traffic on SBC-Ameritech's network does not require customized routing. In fact, CoreComm specifically intends for its traffic to be routed along with SBC-Ameritech traffic based upon the routing tables that currently reside within SBC-Ameritech's network. In this regard, CoreComm has requested throughout the Ameritech region that it be provided the same version of shared transport that has been implemented in Texas. Our request is fully

consistent with the Act as well as the FCC and ICC orders approving the SBC-Ameritech merger.

Q. CAN THE SHARED TRANSPORT NETWORK BE USED TO CARRY CORECOMM'S INTRALATA SERVICES WITHOUT CUSTOMIZED ROUTING?

A. Yes. If CoreComm uses SBC-Ameritech's UNE-P to provide local services, CoreComm could, for example, use the Ameritech CIC and existing routing tables to ensure that its traffic is routed wholly within Ameritech's intraLATA network. CoreComm has ordered the conversion of resale accounts to UNE-P based services in this manner but, despite that request as contained in the relevant LSRs, Ameritech has provisioned such UNE-P lines as though CoreComm had inserted another carrier's CIC for the intraLATA portion of the service. That is, Ameritech has refused to allow such routing. SWBT in Texas, Kansas and Oklahoma to my knowledge, however, routes intraLATA traffic in this manner.

Q. ARE TEXAS CLECS REQUIRED TO PURCHASE CUSTOMIZED ROUTING IN ORDER TO ROUTE THEIR UNE-P BASED INTRALATA TRAFFIC OVER THE SWBT SHARED TRANSPORT NETWORK?

A. No. In fact, the Texas PUC found that CLECs' could use SWBT's Carrier Identification Code ("CIC") in such circumstances, guaranteeing that the CLECs' traffic would be routed with SWBT's traffic. Additionally, the Texas PUC found

that the CIC is not needed for billing purposes. (See Order at 20-24 – Attachment JDW-02.)

Q. DO THE FCC OR THE ICC REQUIRE THAT AMERITECH PROVIDE SHARED TRANSPORT SUCH THAT CLECS LIKE CORECOMM CAN UTILIZE SUCH AN OFFERING IN ORDER TO CARRY THEIR INTRALATA TRAFFIC?

A. Yes, they both do. Paragraph 56 of the merger conditions appendix to the FCC's Order approving SBC's purchase of Ameritech states that Ameritech must provide shared transport under terms and conditions that are "substantially similar to (or more favorable than) the most favorable terms SBC/Ameritech offers" CLECs in Texas as of August 27, 1999. At a minimum, SBC-Ameritech's ULS-ST tariff does not meet those conditions because it does not allow CLECs to route intraLATA traffic over the shared transport network with SBC-Ameritech's intraLATA traffic.

Further, as I have previously indicted, the ICC specifically requires SBC-Ameritech to implement "the same version of shared transport that has been implemented by SBC in Texas," and continues that requirement "even if the FCC eventually decides that unbundling Shared Transport is not proper." (Order in ICC Docket No. 98-0555 at P.187).

Q. IS SBC-AMERITECH'S TEXAS AFFILIATE, SOUTHWESTERN BELL TELEPHONE ("SWBT") CURRENTLY REQUIRED TO CARRY CLEC'S INTRALATA TRAFFIC OVER ITS SHARED TRANSPORT NETWORK IF THEY PURCHASE THE UNE-P?

A. Yes. Although SWBT claimed that the implementation of intraLATA presubscription somehow eliminated its obligation in this regard, the Texas PUC affirmed that the existing interconnection agreements required SWBT to route CLECs' intraLATA traffic in the same manner as SWBT uses its own network (*i.e.*, shared transport). (See Order in Docket No. 20755 at Page 12 – Attachment JDW-02.)

Q. THE TEXAS PUC ORDER TO WIIICH YOU REFER IS DATED AS OF NOVEMBER 1999 WHEREAS THE FCC AND ICC MERGER APPROVAL ORDERS WERE ADOPTED SEVERAL WEEKS BEFORE THAT POINT IN TIME. HOW CAN YOU INDIACTE THAT SWBT WAS REQUIRED TO ROUTE CLECS' INTRALATA TRAFFIC WHOLLY WITHIN ITS NETWOK AT THE TIME THOSE MERGER ORDERS WERE ADOPTED?

A. Frankly, that's simple. If you read the relevant Texas PUC Order, you'll notice that the Commission was interpreting language that had existed within the relevant interconnection agreements for years. spanning the time period during which the merger orders were adopted. Hence. the pertinent language – and SWBT's Obligation - existed contemporaneously with merger approval.

Q. EARLIER IN YOUR TESTIMONY, YOU INDICATED THAT SWBT ALSO PROVIDES SHARED TRANSPORT ON AN UNRESTRICTED BASIS IN KASAS AND OKLAHOMA. HOW WERE YOU MADE AWARE OF THIS?

A. In its order granting SWBT 271 authority in Kansas and Oklahoma the FCC explicitly relied on SWBT's *ex parte* representation that they would allow CLECs to use UNE-P to provide intraLATA toll service in Kansas and Oklahoma[1]. The FCC added that "[s]hould our reliance on SWBT's representations in this record prove to be misplaced, we will take the appropriate enforcement action at that time."[2]

IV. ULS-ST COST STUDIES, RATE STRUCTURE AND PRICING PROPOSAL

Q. MR. PALMER RECOMMENDS THAT THE COMMISSION APPROVE AMERITECH'S ULS COST STUDY, RATE STRUCTURE AND PRICING PROPOSALS. (PALMER TESTIMONY AT PP.8-9 AND EXHIBIT WCP-2) DO YOU BELIEVE MR. PALMER'S COST STUDY SUPPORTS HIS RATE STRUCTURE AND/OR PRICING PROPOSAL?

[1] *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (rel. January 22, 2001) at ¶ 174.

[2] Id.

A. No, I don't. His proposal is logically disjointed and does not comport with the Commission's Order in ICC Docket No. 96-0486 which requires the Company to file a cost study "which establishes prices primarily based upon the flat rate terms of its vendor contracts." (Order at 59). That same Order requires that any "usage charge should not recover any costs associated with the initial cost of the such, but only those usage-sensitive costs necessary to operate and maintain the switch." (Order at 59).

While it is not my intention to specifically comment on the adequacy of Mr. Palmer's cost study *per se*, I note that his ULS rate structure contains an all inclusive port charge of $5.01 and an additional per minute switching charge. Hence, he has proposed a two tier pricing structure. Yet, his study only includes costs for ULS usage. He does not support a port charge of any kind. Nor does he demonstrate that the usage costs he proposes are net of any switching costs that may already be contained in the $5.01 port charge as the Commission requires. (Order at 59). Moreover, he does not demonstrate that his proposed usage charges include only "those usage sensitive costs necessary to operate and maintain the switch" as is required by the Commission. (Order at 59).

Q SHOULD MR PALMER'S PROPOSAL BE ACCEPTED?

A. The Commission's Order was clear. It did not intend for a usage charge to exist unless such a charge was minimal and included only costs that are separate from switch investment costs. Furthermore, the Commission required that a full cost

study be filed to support any proposed prices which deviate from the flat-rated charge of $5.01 per basic port charge already in place. If for no other reason than he did not demonstrate his cost study, proposed pricing structure and rates comply with the Commission's requirements, Mr. Palmer's study, rate structure and pricing proposal should be rejected.

Hence, the $5.01 flat rate port charge should remain in effect until the Commission approves a cost study that (1) simultaneously includes both port and usage costs; (2) excludes initial switching costs in the per minute element; and (3) reconciles the port and usage charges to ensure that that the newly proposed rate structure is compensatory and that the specific prices proposed within that structure do not allow for double counting. To allow both of Ameritech's proposed charges to be implemented would be absolutely inappropriate and completely inconsistent with the TELRIC/LRSIC principles upon which pricing has been developed in Illinois for YEARS.

Q. HAVE OTHER AMERITECH STATES ADOPTED 2 PART PRICING STRUCTURES AS MR.PALMER HAS PROPOSED HERE?

A, Yes. In Michigan, which to my knowledge is the only state in which these issues are not subject to ongoing litigation, the MPSC has approved a port charge of $2.53, which is about half of the proposed charge included in Ameritech-Illinois new pricing structure.

V. COMBINATIONS OF NETWORK ELEMENTS

Q. MR. ALEXANDER INDICATES THAT AMERITECH IS NOT OBLIGATED TO PROVIDE COMBINATIONS OF ELEMENTS TO CLECS UNLESS THOSE ELEMENTS ARE "CURRENTLY COMBINED." DO YOU AGREE WITH HIS DEFINITION OF CURRENTLY COMBINED?

A. No, I do not. My understanding of Ameritech's position on this issue from having participated in a number of proceedings and workshops throughout the region is that a combination of elements is only currently combined if the line in question currently receives dial tone. I have two fundamental issues with that definition.

First off, take as an example a situation where an end user leave an apartment building on Friday and has their phone service terminated and a new tenant moves in on Monday and requests service in that same apartment. Under Ameritech's view of the world, that customer would not be ripe for the UNE-P because the elements necessary to provide such service would not be currently combined. Dial tone would not be present. To the extent that the cable facilities in question remain connected from the end-user premise through to the Ameritech CO, the combination is physically, currently combined and should be available.

Second, Ameritech construes "currently combined" to be based upon a literal inspection of the actual element involved as opposed to a concept which reflect

upon whether the request pertains to something that's ordinarily combined during the normal course of business, or that which is "ordinarily combined" in the network today.

While I disagree with Ameritech on both of these points, I will not comment further as I understand these issues are being addressed in Docket No, 98-0396 and do not properly belong within this proceeding.

I will note, however, that approximately 20% of CoreComm's residential accounts within Illinois ultimately sign up for additional or second lines. Hence, the interpretation Ameritech applies to the combination issue will significantly impair our marketing efforts.

VI. CONCLUSION

Q DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

Attachment JDW-1

Participation in State Regulatory Proceedings

State	Docket No.
Illinois	94-0048,94-0049,94-0301,94-0096,940117,94-0146 95-0201,95-0202 95-0296 95-0458,95-0531 96-0486, 96-0596 97-0516,97-0601,97-0602
Indiana	40611 40785 40571-INT-03
Michigan	U-11280 U-11448 U-11757 U-11743 U-11831 U-12465 U-12622
Ohio	96-922-TP-UNC 96-336-TP-CSS 96-899-TP-ALT 00-1188-TP-ARB
Wisconsin	05-TI-174

JDW-2

DOCKET NO. 20745

COMPLAINT OF BIRCH TELECOM OF TEXAS, LTD., L.L.P. AND ALT COMMUNICATIONS, L.L.C. AGAINST SOUTHWESTERN BELL TELEPHONE COMPANY FOR REFUSAL TO PROVIDE INTRALATA EQUAL ACCESS FUNCTIONALITY	§	PUBLIC UTILITY COMMISSION OF TEXAS

DOCKET NO. 20755

COMPLAINT OF SAGE TELECOM, INC. AGAINST SOUTHWESTERN BELL TELEPHONE COMPANY FOR VIOLATING UNBUNDLED NETWORK ELEMENTS PROVISIONS OF THE INTERCONNECTION AGREEMENT	§	PUBLIC UTILITY COMMISSION OF TEXAS

ARBITRATION AWARD

I. Introduction

A. Summary of Proceedings

The federal Telecommunications Act of 1996[1] (FTA) requires that when an incumbent local exchange carrier (ILEC) and a new local service provider (LSP) are unable to negotiate the terms and conditions of Interconnection Agreements, either of the negotiating parties "may petition a State commission to arbitrate any open issues."[2] The Public Utility Commission of Texas (Commission) is the state commission responsible

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, (codified as amended in scattered sections of 15 and 47 U.S.C.)(FTA).

[2] FTA § 252(b)(1).

for arbitrating disputes pursuant to the FTA.[3] Moreover, the Commission is the state commission responsible for implementing the Interconnection Agreements entered into between ILECs and LSPs pursuant to the FTA.[4] The Commission anticipated it would be called upon to resolve disputes implementing interconnection agreements and promulgated dispute resolution rules to establish procedures for resolving disputed issues under or pertaining to interconnection agreements.[5]

On April 15, 1999, Birch Telecom of Texas, LTD., L.L.P. and ALT Communications, L.L.C. (Birch/ALT[6]) filed a complaint and request for expedited ruling against Southwestern Bell Telephone Company (SWBT) for refusal to provide intraLATA[7] equal access functionality[8]. On April 16, 1999, Sage Telecom, Inc. (Sage) filed a complaint and request for expedited ruling against SWBT for allegedly violating unbundled network element (UNE) provisions of the Sage-SWBT Interconnection Agreement. These complaints revolve around the routing and compensation for intraLATA toll calls placed by customers of Sage and Birch/ALT, both UNE-based competitive local exchange carriers (CLECs), after intraLATA dialing parity is implemented. The complaints were precipitated by a proposal contained in a SWBT

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[3] The Commission has the authority to conduct the FTA arbitrations pursuant to FTA § 252 and §§ 14.001, 52.001-002, 60.001-003, and 60.121-128 of Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-63.063 (Vernon 1998) (PURA).

[4] *Iowa Utilities Board. v. Federal Communications Commission*, 120 F.3d 753 (8th Cir. July 18, 1997), reversed in part, 119 S. Ct. 721 (1999).

[5] P.U.C. Proc. R. 22.321-22.328 (establishing procedures for Commission resolution of disputed issues arising under or pertaining to interconnection agreements approved by the Commission pursuant to its authority under the FTA).

[6] Birch Telecom purchased ALT Communication [*see* Tr. at 48 (July 13, 1999)]. For purposes of convenience, the new entity will be referred to as Birch/ALT.

[7] An intraLATA call is a call that traverses the local calling area boundaries but does not cross the Local Access and Transport Area (LATA). An interLATA call crosses both local calling area and LATA boundaries.

[8] IntraLATA equal access is defined as the ability of a caller to complete an intraLATA toll call using his or her provider of choice by dialing "1" or "0" plus an area code and a telephone number. [P.U.C. SUBST. R. 26.5 (relating to Definitions).]

Accessible Letter dated April 6, 1999 to change the routing of Birch/ALT and Sage intraLATA toll calls. SWBT responded to the complaints on April 22 and April 23, 1999, respectively. The Commission's arbitration panel in this docket is composed of two Commission staff members: D. Diane Parker and Meena Thomas (Arbitrators). The members of the panel, with the assistance of Commission staff advisors, conducted the arbitration in accordance with the Commission's dispute resolution rules.

On April 23, 1999, the Arbitrators met with representatives from SWBT, Birch/ALT, and Sage to discuss consolidation of the dockets, a procedural schedule, and an interim solution to the complaints of Sage and Birch/ALT, pending a hearing on the merits. In Order No. 3, issued on April 26, 1999, the Arbitrators ordered SWBT to suspend the proposal requiring a change in the routing of intraLATA toll calls outlined in its April 6 Accessible Letter until the issuance of a final decision. The dockets were consolidated and a procedural schedule was set in Order No. 4, issued on April 26, 1999.[9]

The parties met privately during May 1999 to attempt to narrow issues raised in the original complaints, but were not successful in resolving their disputes. Consequently, Sage, Birch/ALT, and SWBT filed testimony on the disputed issues.[10] In response to the testimony, the Arbitrators issued Order No. 7 on July 9, 1999, requiring additional information from all parties. A hearing on the merits was held on July 13, 1999. Post -hearing briefs were filed in late July.

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[9] Both Sage and Birch/ALT have adopted the SWBT-AT&T Interconnection Agreement pursuant to FTA Section 252(i). Therefore, all of the relevant contract provisions apply equally to both CLECs. Any reference in the award to the generic term "interconnection agreement" should be understood to apply to both CLECs.

[10] SWBT filed its direct testimony separately in Docket Nos. 20745 and 20755. As the two testimonies are identical [*see* Tr. at 14 (July 13, 1999)], the Arbitrators will cite to the Direct Testimony of Rachel Bernstein submitted in Docket No. 20755 (dated June 15, 1999).

The FTA limits the issues to be decided in an arbitration to those set forth by the parties in the petition and response.[11] This Arbitration Award resolves the disputed issues presented for arbitration between SWBT, Birch/ALT, and Sage.

B. Structure of the Award

The Arbitrators believe that the issues outlined in the parties' joint Decision Point List ("DPL") boil down to six categories of disputed issues:

- Routing of intraLATA toll calls (DPL Issues 1 and 4);
- Routing of intraLATA toll calls to the intraLATA primary interexchange carrier (DPL Issue 5);
- IntraLATA dialing functionality (DPL Issues 2 and 3);
- Requirement for a carrier identification code (DPL Issue 10);
- Compensation for intraLATA toll calls (DPL Issues 6 and 7); and
- The procedure for informing SWBT of a CLEC's customer intraLATA Primary Interexchange Carrier choice (DPL Issues 8 and 9).

[11] FTA § 252(b)(4).

II. Decisions on Issues Presented for Arbitration

A. DPL Issue Nos. 1 and 4

DPL Issue No. 1: In a post-intraLATA dialing parity environment, does the interconnection agreement require that 1 + intraLATA calls initiated by Birch/ALT or Sage end user customers be routed and transported in the same way that 1 + interLATA calls are routed and transported?

DPL Issue No. 4: Is SWBT required to provide intraLATA toll functionality to and in parity with its provision of intraLATA toll to its end user customers?

1. Parties' positions

SWBT argues that, in a post-intraLATA dialing parity environment, 1+intraLATA calls initiated by Birch/ALT or Sage end user customers should be routed and transported in the same way 1+interLATA calls are routed and transported. SWBT bases its answer on section 5.2.2.2.1.2 in Appendix Pricing – UNE of the interconnection agreement,[12] which states:

> After the implementation of intraLATA Dialing Parity, intraLATA toll calls from [CLEC] ULS Ports will be routed to the end user intraLATA Primary Interexchange Carrier (PIC) choice. When an interLATA toll call is initiated from an ULS port it will be routed to the end user interLATA PIC choice.

SWBT interprets DPL Issue No. 4 to discuss parity between customers. SWBT maintains that after implementing dialing parity "...Birch/ALT's and Sage's end users may now select Birch/ALT or Sage as their intraLATA toll carrier of choice for direct

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[12] SWBT's Post-Hearing Brief at 4 – 5 (July 22,1999).

dialed calls, just as they may select from among numerous other carriers."[13] and "[Birch/ALT customers] will continue to dial the same number of digits they did prior to dialing parity."[14] During the hearing on the merits, SWBT broadened its answer to DPL Issue No. 4, claiming that SWBT handles its own intraLATA toll calls at parity with Birch/ALT and Sage. SWBT argued that it routes SWBT intraLATA calls to its own point of presence (POP) (i.e., SWBT tandem), just as Birch/ALT and Sage should do after implementing dialing parity.[15]

Sage, on the other hand, claims that section 5.2.2.2.1.2 in Appendix Pricing – UNE merely confirms SWBT's obligation to route toll calls to the appropriate PIC, but does not require that the physical routing and transport of intraLATA and interLATA calls be handled identically.[16]

In response to DPL Issue No. 4, Birch/ALT cites Section 2.4 in attachment UNE of the interconnection agreement, which reads: "SWBT will provide [CLEC] access to unbundled Network Elements provided for in this Attachment, including combinations of Network Elements, without restriction."[17] Birch/ALT also relies on Section 2.4.1 in the same attachment, which states "...[When a CLEC orders UNEs in combination] SWBT will provide the requested elements with all the functionality, and with at least the same quality of performance..., that SWBT provides through its own network to its local exchange service customers receiving equivalent service..."[18]

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[13] Rebuttal Testimony of Rachel Bernstein at 6 (June 24, 1999).

[14] *Id.* at 9.

[15] SWBT's Reply Brief at 7 (July 28, 1999).

[16] Direct Testimony of Gary P. Nuttall at 15-16 (June 15, 1999).

[17] Direct Testimony of Sean Minter at 6 (May 3, 1999).

[18] *Id.* at 9.

Sage and Birch/ALT claim that they currently provide intraLATA service to their end use customers using a combination of UNEs and, therefore, should be able to use this combination of network elements, in parity with SWBT's use of them, after dialing parity is implemented.[19]

2. Discussion

The routing of intraLATA calls can be accomplished in a variety of ways. The diagram in Appendix A illustrates several options for routing an intraLATA call originated at element No. 1 (originating loop and local switch) and terminating at element No. 5 (terminating loop and local switch). Referring to this diagram, some of the options for routing intraLATA calls, as discussed during the hearing on the merits are:

1. Using elements 1, 9 and 5;[20]
2. Using elements 1, 2, 3, 4 and 5;[21]
3. Using elements 1, 2, 3, 6A, the non-SWBT tandem, 6B, 3, 4 and 5;[22] or
4. Using elements 1, 7, the non-SWBT tandem, 8 and 5.[23]

Technical feasibility is a key consideration in evaluating routing options. During the hearing on the merits, none of the parties testified that any of the routing scenarios presented above was not technically feasible. However, both Sage and Birch/ALT did testify that some of the elements appearing in the diagram do not exist in actual practice; they pointed out that not a single interexchange carrier (IXC), including AT&T, has direct

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[19] Rebuttal Testimony of Sean Minter at 6-7 (May 3, 1999); Direct Testimony of Gary P. Nuttall at 14-15 (June 15, 1999).

[20] Tr. at 265 (July 13, 1999).

[21] *Id.* at 116.

[22] *Id.* at 133-134.

[23] *Id.* at 114-115.

trunking from its tandem to every end office in the LATA.[24] However, it should be pointed out that the lack of trunking to every end office is arguably related primarily to cost considerations, rather than to technical infeasibility.

An important consideration related to, but slightly different from, technical feasibility, is network failure probability. As was mentioned on the record numerous times, the more elements used in routing a call, the greater the possibility of network failure.[25]

Another consideration in evaluating routing options is the cost-efficiency of the routing scheme. The FCC has ruled that limiting a CLEC's access to UNEs by requiring the CLEC to own or build its facilities would diminish competition.[26] Allowing an entrant to take full advantage of the ILEC's economies of scale and scope would promote a rapid and efficient entry and result in a more robust competition.[27] In the Third Order on Reconsideration, the FCC addressed specifically the issue of routing, stating:

> By requiring incumbent LECs to provide requesting carriers with access to the incumbent LEC's rounting (*sic*) table and to all its interoffice transmission facilities on an unbundled basis, requesting carriers can route calls in the same manner that an incumbent routes its own calls and thus take advantage of the incumbent LEC's economies of scale, scope, and density.[28]

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[24] *Id.* at 230.

[25] *Id.* at 265-266; 272-273.

[26] *Implementation of the Local Competition Provisions in the Telecommunication Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 at ¶340 (rel. Aug 8, 1996). (First Report and Order).

[27] *Id.*

[28] *Implementation of the Local Competition Provisions in the Telecommunication Act of 1996*, CC Docket No. 96-98, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 at ¶2 (rel. Aug 18, 1997). (Third Order on Reconsideration).

In the pre-dialing parity environment, Sage and Birch/ALT routed their intraLATA toll calls using elements 1 through 5 (routing option 2 above).[29] SWBT routed its intraLATA traffic identically. This is the most efficient and failure-proof way for SWBT to route its intraLATA traffic. Similarly, the CLEC has the benefit of utilizing the ILEC's economies of scale.

But, according to SWBT, in a post-dialing parity environment, the interconnection agreement requires CLECs to route their intraLATA traffic in a different manner. SWBT contends that an intraLATA call carried by a CLEC should be either transported from SWBT's tandem to a non-SWBT tandem (via element 6A in Appendix A) or, alternatively, transported directly from the originating end office to a non-SWBT tandem (via a direct trunk, element 7 in Appendix A).[30] From the non-SWBT tandem, SWBT offers analogous routing schemes to the terminating end office. From the non-SWBT tandem the call can be routed to the terminating end office either using element 6B, 3 and 4 or using element 8 (routing options 3 and 4 above).

An analysis of SWBT's proposed routing scheme leads to certain conclusions. First, while SWBT's proposed routing scheme is technically feasible, that is not to say that all requisite elements, such as direct trunking to each end-office, are actually in place today; technically speaking, however, these elements *could* be added. Nevertheless, SWBT's proposed routing scheme introduces additional elements for the routing of intraLATA calls and, therefore, increases the probability of network failure or performance degradation. The introduction of elements 6A and 6B (entrance facilities), and the non-SWBT tandem to the network,[31] increases the risk that a CLEC's intraLATA call routed through these elements could not be completed if any single element were to

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[29] Response of Sage to Order No. 7 (July 12, 1999); Response of Birch/ALT to Order No. 7 (July 12, 1999). If the direct trunk (element No. 9 in Appendix A) existed in the real-life scenario, the call would be routed using elements 1, 9 and 5 (routing option 1 above). [*See* Tr. at 69-70 (July 13, 1999)].

[30] SWBT Brief 4-5 (July 22, 1999).

[31] See Appendix A, network diagram.

fail.[32] Conversely, an intraLATA call carried by SWBT would not be subject to this risk of failure since it would be routed without using these extra elements. If one compares SWBT's provision of intraLATA toll service through its tandem (elements 2, 3 and 4 in Appendix A), to SWBT's proposal for Sage and Birch/ALT, it becomes evident that Sage and Birch/ALT would be forced to route an intraLATA call using *four more* elements than SWBT would use to route its own call.[33] In contrast to the way SWBT routes its intraLATA traffic using direct trunking (element 9 in Appendix A)[34], under SWBT's scheme, Sage and Birch/ALT would be required to route an intraLATA call using *seven more* elements than SWBT would use: elements 2, 3, 6A and B, non-SWBT tandem, 3 and 4.

Another major flaw in SWBT's routing scheme is that it is in clear violation of the FCC's rules. SWBT's proposed routing protocol results in preventing a CLEC from using SWBT's routing instructions, even though the routing instructions are a feature of the UNE switch port. It is undisputed that the switch port in the originating end office (element 1 in Appendix A) is a UNE. The routing table is clearly a feature of the UNE switch port. The FCC has stated that an ILEC must provide all of the functions associated with a UNE.[35] Specifically, the FCC stated in the Third Order on Reconsideration that a CLEC purchasing a UNE switch port is allowed to access the ILEC's routing table

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[32] Tr. at 264-265 (July 13, 1999).

[33] The shortest way to route an intraLATA call between elements 1 and 5 (*see* Appendix A), according to SWBT's interpretation of the interconnection agreement, is to use elements 7, 8 and the non-SWBT tandem. This approach would involve the same number of elements as SWBT's own intraLATA toll call routing scheme but is not economically efficient. However, the alternative route SWBT imposes on the CLECs would involve four more elements once the call reaches SWBT tandem (element 3): elements 6A and 6B, non-SWBT tandem, and, yet again, element 3.

[34] Tr. at 69-70 (July 13, 1999); SWBT's Reply Brief at 6 (July 28, 1999). In developing a rate for blended transport in the Mega Arbitration, the parties stipulated that 70% of the calls are routed using direct trunking [*see* Tr. at 274-275 (July 13, 1999)].

[35] First Report and Order at ¶292.

resident in the switch and route its traffic in the same manner the ILEC routes its own traffic.[36]

Further, SWBT's interpretation of the routing required for Sage and Birch/ALT calls in a post-dialing parity environment would put additional strain on the SWBT tandem.[37] It is unclear whether the SWBT tandem would be capable of handling the additional load caused by changing the routing of intraLATA traffic to mirror the way interLATA traffic is handled currently. In the event the tandem could not handle the increased volume of calls, traffic going through the SWBT tandem could experience significant blockage.[38] The capacity, or lack thereof, of the tandem, is an issue directly related to integrity of the network.

Moreover, SWBT's proposed routing scheme would cause Sage and Birch/ALT to incur additional costs, as well as subjecting them to delay. Currently, neither Sage nor Birch/ALT have their own tandem switch and the costs of installing such a switch are estimated to be as much as $10 million, even without taking into consideration engineering fees and costs.[39] Furthermore, installing a tandem switch can take up to 18 months.[40]

A less expensive solution for Sage and Birch/ALT would be to enter into an interconnection agreement with a carrier that owns a tandem switch.[41] Nonetheless, contracting with another carrier would still subject Sage and Birch/ALT to additional

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[36] Third Order on Reconsideration at ¶2.

[37] Under the routing scheme involving the non-SWBT tandem, as described above, each intraLATA call carried by a CLEC would be switched twice through the SWBT tandem. In addition, additional trunk terminations would be needed to handle the traffic between the two tandems.

[38] Tr. at 155-157 (July 13, 1999).

[39] *Id.* at 294-296.

[40] *Id.* at 299.

[41] *Id.* at 296-297.

expense and delay. Entering into an interconnection agreement with a carrier that owns a tandem switch, at a minimum, would involve the time necessary to negotiate a contract.[42] Moreover, such an arrangement would require Sage and Birch/ALT to order additional facilities such as transport and switching facilities.[43]

The only way for Sage and Birch/ALT to avoid routing calls through the SWBT tandem and, at the same time, maximize network efficiency, as compared to the routing scheme involving the SWBT tandem, would be to purchase and establish direct trunking between each end office in the LATA to the non-SWBT tandem. This option is efficient from the network standpoint, but is economically inefficient.[44] Although SWBT proposed direct trunking as an option available to Sage and Birch/ALT, the SWBT witness was not aware whether either Sage or Birch/ALT was currently utilizing direct trunking.[45] As the witness for Sage clarified, deploying trunks to more than forty end offices in the LATA is a very expensive economic decision.[46] No IXC, including AT&T, has direct trunking to every end office in the LATA, according to Sage and Birch/ALT.[47]

3. Arbitrators' Ruling

The Arbitrators reject SWBT's position that intraLATA calls have to be routed the same way interLATA calls are routed and require SWBT to provide Sage and Birch/ALT the same routing functionality SWBT provides to itself. The Arbitrators

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[42] *Id.* at 298-299.

[43] *Id.*

[44] By adding elements 7 and 8 and the non-SWBT tandem, Sage and Birch/ALT would create a route identical to SWBT's route that uses elements 2, 3, and 4. This routing scheme is economically burdensome, given Sage's and Birch/ALT's current customer base.

[45] Tr. at 115 (July 13, 1999).

[46] *Id.* at 231.

[47] *Id.* at 230.

conclude that the first sentence in Section 5.2.2.2.1.2 of Appendix Pricing – UNE merely portrays the post-dialing parity scenario in which intraLATA calls would be routed to the customer's intraLATA primary exchange carrier (LPIC)[48]; it does not require that the physical routing and transport of intraLATA and interLATA calls be handled identically. As Sage and Birch/ALT point out, Section 2.4.1 in Attachment 6 requires SWBT to provide the CLEC with all the functionality of a combination of UNEs, similar to what SWBT is providing to itself. Since SWBT is providing and would continue to provide, in a post-dialing parity environment, intraLATA toll service using the same combination of elements, the Arbitrators rule that the Sage and Birch/ALT should be able to get the same functionality from the combination of UNEs they are leasing from SWBT. Furthermore, Section 2.4 in Attachment 6 – UNE requires SWBT to provide Sage and Birch/ALT access to UNEs, including combinations of UNEs, *without restriction*.

Neither Sage nor Birch/ALT is an IXC[49] and there is no provision in the interconnection agreement or in state law, federal law or Commission rules that requires them to become IXCs in order to provide intraLATA toll service to their customers. SWBT's own witness admitted that there is no support in the FTA for SWBT's position that intraLATA calls should be treated as interLATA calls.[50] SWBT's interpretation of Section 5.2.2.2.1.2, dealing with the routing of interLATA calls, creates artificial limitations and is not consistent with the requirements of equal quality in the transmission and routing of telecommunications traffic found in the interconnection agreement and FCC orders. In addition, from a technical standpoint, SWBT's routing requirements are extremely expensive, not efficient and can harm the network performance.

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[48] In order to avoid confusion between the PIC (the carrier of interLATA toll traffic) and the intraLATA PIC (the carrier of intraLATA toll traffic) which can be different entities, the intraLATA PIC will be referred to hereinafter as LPIC.

[49] Tr. at 146 (July 13, 1999).

[50] *Id.* at 106.

Parity is an underlying theme of the interconnection agreement and of both state and federal law. As explained further in the Arbitrators' analysis of DPL Issue Nos. 2 and 3, a CLEC customer and a SWBT customer should be required to dial the same number of digits to place an intraLATA call. Parity, however, does not end there. Sage and Birch/ALT are providing intraLATA toll service using UNEs in a pre-dialing parity environment and can continue to use UNEs to provide intraLATA toll service in a post-dialing parity environment.[51] The issue here is not parity between an ILEC and an IXC but rather between an ILEC and a CLEC.

B. DPL Issue No. 5

DPL Issue No. 5: In a post-dialing parity environment, does the interconnection agreement require SWBT to route all intraLATA toll traffic to the LPIC selected by the end user?

1. Parties' positions

SWBT's position is that after implementing intraLATA dialing parity, all intraLATA toll calls should be routed to the LPIC selected by the end user.[52] SWBT bases this position on Section 5.2.2.2.1.2 in Appendix Pricing – UNE. This section states: "After the implementation of intraLATA Dialing parity, intraLATA toll calls from [CLEC] ULS Ports will be routed to the end user intraLATA Primary Interexchange Carrier (PIC) choice..."

On the other hand, Sage and Birch/ALT claim that Section 5.2.2.2.1.2 applies only to customers who make an affirmative LPIC choice. They assert that P.U.C. SUBST.

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[51] See Arbitrators' ruling on DPL Issue Nos. 6 and 7.

[52] Direct Testimony of Rachel Bernstein at 5-6 (June 15, 1999).